October 28, 1996
ILR 96-G

Representative Robert Killpack
5860 Kingston Way
Murray UT 84107

Subject: Office of Recovery Services Case Review

Dear Representative Killpack:

At your request, our office has conducted a limited review of the Office of Recovery Service's (ORS) case file concerning one of your constituents. The case involved a Utah noncustodial parent whose ex-wife now lives in Indiana. Consequently child support authorities from Utah and Indiana (Vanderburgh County Attorney and the county's Division of Child Support Enforcement hereafter referred to as the Indiana offices) were involved in the collection of support. This case demonstrates several concerns with the child support process when multiple states are involved. The child support process may be hindered by a lack of communication between the two states causing significant delays in processing the case. In addition, the child support authorities may not be willing to protect the rights of the noncustodial parent consequently, the parent may need an attorney. Also, in our opinion, ORS officials and all other parties involved could have done more to mitigate the events that have occurred regarding this case over the past three years. Finally, we realize this case is one isolated example but the issues identified here are potentially significant and may justify a more thorough and detailed audit of similar cases.

We examined the three questions which you raised. (1) Was ORS's treatment of the noncustodial parent in this case fair and responsive? (2) Could ORS have done more to protect represent the rights of the noncustodial parent? (3) Does this examination justify a more detailed audit of similar child support cases? To respond to these questions we specifically examined your constituent's ORS case file from 1992-1996. This review details the potential complexity of a child support case when the parents reside in separate states and the child support authorities (from both states) have opposing opinions concerning the actions of the other.

Our examination of the case file indicates that the Indiana offices first contacted Utah on this

case in 1993, in an attempt to get Utah's assistance in collecting a support order that was modified by an Indiana court as a result of legal action generated by the custodial parent and her private attorney. At this time, the custodial parent was paying $50.00 per month for child support in accordance with a 1985 Utah support order. Sometime prior to, or during, 1992 the custodial parent moved to Indiana. In December 1992, an Indiana court awarded the custodial parent a modification to the Utah child support order changing the amount to be paid from $50.00 to approximately $335 per month ($77.40 per week).

Utah and Indiana Disagree on Several Child Support Decisions

ORS records indicate that both Utah and Indiana disagree with the actions of the other regarding the legality of the 1992 Indiana support modification order for the noncustodial parent (your constituent). In addition, this order has generated a significant arrearage which is also the subject of conflict between the two states. In our opinion, the miscommunications between the two child support authorities have resulted in lengthy delays in processing the case. The delays impact both the noncustodial and the custodial parents. The noncustodial parent believes he has been prosecuted by two states for the same child support expenses and feels the system has been unfair. Records indicate that the custodial parent feels past support was inadequate and she was given the unfounded hope of receiving lump sum payments for back support that may never materialize because of the questionable legality of the Indiana modified support order.

ORS records indicate that the Utah Attorney Generals Office provided an opinion that the Indiana support modification order was illegal (because of a lack of jurisdiction) sometime in January 1993. However, three and one-half years later (August 1996) the noncustodial parent is still fighting Indiana's interpretation of a 1992 modified support order. During this time the Indiana offices have twice garnished his federal tax refunds, in 1995 they intercepted $2,467 from his 1994 refund and again in 1996 they intercepted $1,933 from his 1995 refund. Indiana officials told us they will continue to intercept future federal tax refunds because their records show a large child support arrearage still owed based upon the Indiana modification order.

For example, as of September 1995 a letter sent to the noncustodial parent indicated a total arrearage of $7,617 according to the Indiana records while the Utah ORS records reported a credit of $633 for the same time period. The $633 Utah credit was the balance in the noncustodial parent's account as a result of ORS crediting $1,143 to his child support account to offset a part of the money Indiana garnished from his 1994 federal tax refund. While Utah interpreted the order as being illegal, the Indiana offices claimed it is a legal order. Consequently, the Indiana child support authorities have charged the noncustodial parent with an arrearage of $285 per month for the unpaid difference between his old Utah child support payments of $50 per month compared to the Indiana modified child support rate of $335 per

month.

From 1993-1996 the noncustodial parent has been in an ongoing conflict with Indiana and sometimes Utah's ORS concerning his child support payments. The noncustodial parent hired an attorney to represent him at a significant personal cost. In addition, during this time period, the noncustodial parent wrote several letters to the Governor, his United States senator and his state representative, asking each of them to intervene in his case. As a result, ORS was asked on several occasions to closely examine the case files.

In addition, the case files indicate that over a three and one-half year period the non- custodial parent and his attorney worked with as many as nine different ORS representatives. Specifically, the case file has passed between four different team leaders. Also the case file shows numerous contacts and letters with three different ORS investigators. Finally, two quality assurance employees also have phone contact and correspondence with the noncustodial parent or his attorney. The contact with nine ORS employees does not include additional contacts with two ORS attorneys, and several department and ORS management officials involved in the correspondence regarding this case.

In our opinion, some of the correspondence in the case file indicates a lack of communication that has delayed action on this case. The case file demonstrates several examples where significant communication problems between both the Utah and Indiana child support agencies occurred. One example is Utah's failure to quickly communicate to the Indiana offices their decision regarding the legality of Indiana's support modification order. A second example, of miscommunication between the two child support authorities, was Indiana's decision to use the questionable order to collect an arrearage against the noncustodial parent after both agencies agreed to set the Indiana order aside in favor of a more recent Utah support modification order. The ORS case file indicates that both of these decisions caught the child support authorities in the other state by surprise and caused confusion and discord. We believe these are problems that both child support authorities could have resolved had they communicated more clearly. Finally, neither of the child support authorities sought any mediation of the issues that have gone on for more than three years.

Our concern is the potential impact the communication problems between the two child support authorities have on the parents. The noncustodial parent believes the system is unfair and has hired an attorney (at some personal cost) to represent him in dealing with the Utah

ORS office. The custodial parent was given the hope of lump sum payments for back support that may never materialize because of the questionable legality of the Indiana modified support order.

Utah Fails to Communicate Concerns Regarding the Legality of the Order

In January 1993 the Utah Assistant Attorney General made a determination that the 1992 Indiana support modification order for the noncustodial parent was illegal or invalid because it lacked proper jurisdiction. Our review of his ORS file indicates that Utah never clearly communicated to the Indiana offices their determination that the Indiana modified support order was illegal until February 1995, more than two years after the determination was made. This was confirmed by a discussion with the county prosecuting attorney in Indiana, who told us that she was never aware of Utah's concern with the legality of the Indiana modification order until mid 1995, which was more than two years later. The Indiana county prosecuting attorney stated that she felt betrayed by the Utah ORS office because in her opinion the two offices had an earlier understanding that both offices would let the noncustodial parent fight the Indiana child support modification order privately.

One example of the communication gap was demonstrated by correspondence written in November 1994. The Utah Assistant Attorney General wrote a letter to the Indiana county prosecutor requesting they provide the grounds for their intended action to attach the noncustodial parent's 1994 federal tax refund. However, this letter did not detail any of Utah's concern about the questionable legality of the Indiana modified support order. Indiana officials responded stating that their garnishment action of the noncustodial parent's federal tax refund was for a legally owed child support arrearage (referring to the questionable support order) over the amount of $150. This reply indicates the Indiana offices had a legal order. Consequently, Utah should have responded to the Indiana reply regarding the Attorney General's concern about the legality of the modified support order that was being used by Indiana to justify the IRS garnishment action. However, the ORS records show no contact was made or discussion held with the Indiana offices regarding the Indiana reply.

Not until February 1995 did we see any indication in the ORS file of an urgency to find out why Indiana continues to pursue the questionable support modification order. In February 1995 the Utah Assistant Attorney General wrote a note to the ORS investigator asking *"please find out why Indiana is pursuing the order, as you can see it is causing us problems"*. We believe the problems referred to in the note were the numerous inquiries and complaints by the elected officials on the noncustodial parent's behalf. In response to this note, the case file indicates the ORS investigator contacted the Indiana office on February 22, 1995 and discussed (with a county employee) the validity of the modified support order. This contact with the county's Office of Child Support Enforcement is the first recorded contact (in the ORS files) with the Indiana office

which expressed Utah's perception of the legality of the Indiana order. This contact was more than two years after Utah had determined the Indiana order to be illegal. However, we found no evidence that the county prosecutor was contacted until much later, which led to continued confusion and conflict.

Indiana Fails to Communicate Concerns Regarding the Determination of Arrearage

Not only did Utah fail to communicate their concerns, but Indiana's decision to use the questionable order to collect the arrearage against the noncustodial parent also was never clearly communicated to the Utah staff. The Utah records indicate that as early as April 1994 both child support authorities were in agreement to have Utah modify the support order. But the records do not indicate any agreement or even discussion between the two authorities regarding the treatment of the possible arrearage from the questionable Indiana support modification order.

In late 1994 the noncustodial parent started getting notices from the Indiana offices regarding the payment of arrearages accumulated under the questionable Indiana order. The noncustodial parent was told that his failure to pay could result in the garnishment of any of his future IRS (Internal Revenue Service) tax refund monies. The ORS records indicated that Utah officials did not understand why the Indiana child support authority was pursuing the IRS tax refund garnishment action when the agencies in both states had agreed to set it aside as soon as Utah modifies the support order.

ORS records indicate that the Utah officials expected the earlier agreement between the two child support authorities regarding the Utah modified support order to absolve the issue of the Indiana authority charging the noncustodial parent for an arrearage. An April 7, 1995 letter written to ORS from the noncustodial parent's attorney asked just that question *"if they cancel that order (the Indiana order) there should not be any reason for them to grab my client's taxes"*. ORS officials did not respond to that statement. On April 11, 1995, ORS sent the child support authorities in Indiana a copy of the new Utah support modified order, as per the agreement of the two agencies. Later in April and again in May 1995, ORS staff contacted the Indiana child support authority to determine if they were still pursuing an IRS tax garnishment, in light of the recent Utah support modification order. At each contact, ORS staff were told that Indiana may have processed a tax interception but they did not know because they get that information from Indianapolis and they had not received a tax interception with the noncustodial parent's name on it. A letter written on June 9, 1995 to the noncustodial parent from an ORS official stated that the issue of Indiana intercepting his federal tax refund will shortly be resolved. Also, in this letter it was stated that the noncustodial parent could work directly with Indiana to get what refund was owed to him.

However, not until June 28, 1995 did an ORS investigator get a clear reply to their inquiries regarding the federal tax refund garnishment from Indiana. Indiana officials then stated they were not planning on refunding any of noncustodial parent's IRS garnished tax monies because they believed it was legally owed arrearage. Although, the Indiana officials recognized the new Utah modification order, they had chosen to apply more than two years of arrearages using the questionable Indiana modification order. Just as Indiana authorities were not aware of Utah's interpretation of the illegality of the Indiana order; Utah ORS officials were not aware of Indiana's position regarding the accumulation of the arrearage under the questionable Indiana modified order. However, now that ORS officials understood how Indiana child support authorities were applying the arrearage, the Utah officials were puzzled regarding what course of action to take next.

On July 14, 1995, the noncustodial parent's attorney asked ORS for a clarification of the legal basis upon which Indiana was charging his client for the arrearage. In a letter dated August 10, 1995 the attorney is told that *"the (ORS) investigators in Utah who have worked with his client... have not been able to obtain a response from Indiana as to its intentions regarding refunding the IRS tax money to his client... Utah had hoped to resolve this matter more quickly on behalf of the noncustodial parent and can understand his frustration"*. This response indicates some ORS staff still did not understand Indiana's position regarding the collection of the arrearage, even though it was made clear 16 days earlier in a discussion with an ORS investigator. This misunderstanding was possible because of the number of different ORS staff working the case caused some confusion. But again one month later, on August 11, 1995 and on the 14th , two different Utah staff independently contact Indiana and to again confirm Indiana's position regarding the collection of the arrearage. Finally after these last two contacts, all ORS staff seem to have gained an understanding that the Indiana child support authority was not going to refund any of the noncustodial parent's federal tax refund money because they accepted it as a payment on arrearage.

Understanding Indiana's position, the noncustodial parent's attorney and his state representative pressed Utah ORS officials (on several occasions) to offset the tax interception by allowing the parent a credit for ongoing support. Utah was hesitant to give a child support credit because of the possible legal impact of that action. As a result, ORS officials sought advice from the federal officials and also legal advice from the Utah Assistant Attorney General. On August 16, 1995 Utah ORS officials decided to credit the noncustodial parent's account with the amount of money improperly taken by Indiana as pre-paid child support. This action was quickly communicated to the Indiana child support authorities.

In the above example, the two states had a communication gap regarding the application of the arrearage from the questionable child support modification order that went for more than a year. The problem is not yet resolved as of August 1996. The noncustodial parent has also

had his 1995 federal tax refund garnished by the Indiana child support authorities. Recently, Indiana officials told us they will submit another tax garnishment for the noncustodial parent's 1996 federal refund.

More Could Have Been Done to Mitigate the Issues

Our review of the file indicates that all parties could have done more to mitigate the chain of events that have occurred regarding this case over the past three years. First (and most important), besides improved communications, the two child support authorities could have more aggressively sought mediation of the case through the various levels of management and/or the federal Office of Child Enforcement. Second, the noncustodial parent should have accepted repeated council from ORS to reduce the amount of his federal tax refund. If he had done so, Indiana authorities would not have had future refunds to intercept. Finally, all parties have had the option to resolve the case by litigation but none have chosen to do so. In our opinion, this last option would not make sense until all means of mediation have failed.

Our concern is who has the final responsibility for bringing a controversy between the two child support jurisdictions to an end. Utah ORS officials have consistently told the noncustodial parent and his attorney (as recently as April 1996) that Utah can not assist him and he personally needs to litigate this case in an Indiana court of law. However, the parent believes he can not afford the cost of such litigation.

We believe the controversy that has created the problem is not between the custodial and noncustodial parents but between the two child support jurisdictions. The ORS records show the two child support authorities have taken opposite positions regarding the legality of the Indiana support modification order and the collection of arrearage. There is no doubt the noncustodial parent prefers the Utah position. But, Utah ORS staff chose to formally make that interpretation. Also, records indicate that Utah expressed that opinion to the noncustodial parent on several occasions. No doubt ORS's position (on the legality of the Indiana order) helped formulate the noncustodial parent's position. Consequently, in our opinion, the two child support authorities should first aggressively attempt to mediate both issues, the legality of the order and the collection of arrearage.

Regarding this point, Utah officials have often told the noncustodial parent that they can do nothing to settle the controversy with the Indiana child support authorities. Yet in letter dated August 17, 1995 (more than a year ago), the Utah Assistant Attorney General made a recommendation that ORS officials ask the federal Office of Child Support Enforcement (OCSE) authorities to mediate the problems between the two agencies. This recommendation was repeated in a January 5, 1996 letter from the Indiana county prosecutor to ORS. The county

prosecutor stated *"generally speaking it seems like there should be some form of interstate mediation for problems like this. It would have been nice to have some impartial third party or agency like OCSE make the final ruling."* This does not seem to reflect the attitude of someone unwilling to negotiated the problem. As a result of these two requests, we asked the ORS director (in July 1996) why the agency had never sought an impartial mediation on this case from the federal OCSE. The director has recently requested the assistance of OCSE and is having discussions with both the federal government and Indiana child support officials regarding this case.

However, the noncustodial parent is also not without fault. For example, after Indiana authorities intercepted his $2,467 1994 federal tax refund, he was repeatedly advised by the Utah ORS staff that he should protect himself from further tax interceptions by ensuring his federal tax refunds would be small or nonexistent. When the noncustodial parent's 1995 tax refund of $1,933 was intercepted, he had received sufficient notice to change his withholding and eliminated the impact of that tax interception but failed to protect himself from Indiana's tax garnishment actions.

As a result of this limited review, we recommend that Utah ORS and the Indiana child support authorities resolve their differences either through a federal mediation source or by negotiation between their respective managers (or attorneys). We realize this is one isolated case but the issues identified here are significant and may justify a thorough and detailed audit. There were other less significant concerns regarding this case which need not be addressed in this review.

We hope this letter has provided the information that you need on this issue. If you have any further questions or concerns, please contact us.

Sincerely,

Wayne L. Welsh
Auditor General

WLW:JMS/lm